Supreme Court, U.S.
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No. 01-1474

IN THE
SUPREME COURT OF THE UNITED STATES
October Term 2001

RAYMON BLEDSOE SR.,
Petitioner,
v.

NUCOR-YAMATO STEEL COMPANY,
Respondent.

On Petition For A Writ of Certiorari To The
United States Court of Appeals For the Eighth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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Question Presented

Mr. Bledsoe missed the statutory deadline for filing his race discrimination charge. He blamed his omission on the Equal Employment Opportunity Commission. The Eighth Circuit declined to excuse Mr. Bledsoe's delay based on the equitable tolling doctrine because the EEOC correctly informed him of the deadline. Did the Eighth Circuit misapply precedent by holding that the EEOC did not mislead Mr. Bledsoe into missing the filing deadline?

Parties to the Proceeding and Corporate Disclosure Statement

All parties to the proceedings in the United States Court of Appeals for the Eighth Circuit are included in the caption. The Respondent, Nucor-Yamato Steel Company (Limited Partnership), is a division of Nucor Corporation, a publicly held company. The following entities also have a pecuniary interest in the outcome of this case: (a) Nucor-Yamato Holding Corporation; (b) Nucor-Yamato Investment Corporation; (c) Yamato Holding Corporation; (d) Yamato-Kogyo U.S.A. Corporation; (e) Nucor-Yamato Corporation; and (f) Yamato-Kogyo Company Limited. Entities (a) through (f) have some direct or indirect ownership interest in Nucor-Yamato Steel Company (Limited Partnership).

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Statement of the Case

Nucor-Yamato Steel Company ("NYS") employed Mr. Bledsoe for six years at its Blytheville, Arkansas, steel mill. During his employment, Mr. Bledsoe had a history of disciplinary problems, "including insubordination, sleeping on the job and fighting with co-workers." **Appendix A 2a.** As a result of those problems, NYS terminated his employment on July 2, 1998.

About a month after his termination, Mr. Bledsoe contacted the Equal Employment Opportunity Commission by telephone. Mr. Bledsoe filled out a charge information form and provided it to the EEOC but did not file a charge. Months before the charge-filing deadline, an EEOC representative interviewed Mr. Bledsoe by telephone and informed him of his rights under the law and that he had 180 days from his termination to file an administrative charge. Approximately two months before the deadline, Mr. Bledsoe sent a letter to the EEOC office, expressing dissatisfaction with the telephone interview. He did not file a charge and made no further effort to file a charge before the 180 days expired. One month after the deadline passed, Mr. Bledsoe sent another letter to the EEOC. He filed a charge on March 8, 1999, nine months after his termination.

The EEOC issued a right-to-sue letter to Mr. Bledsoe two days after he filed his charge. Mr. Bledsoe then filed

suit *pro se* against NYS in the Eastern District of Arkansas, alleging race discrimination and retaliation under Title VII. Mr. Bledsoe later amended his complaint to add state law claims of defamation and outrage against NYS.

NYS moved for summary judgment based, in part, on Mr. Bledsoe's failure to file a timely EEOC charge. In response to NYS's Motion, Mr. Bledsoe blamed the EEOC for his failure to file a charge within the required time period and sought equitable tolling of the statute of limitations. Mr. Bledsoe placed blame on the Commission even though the Commission had correctly informed him of the deadline and even though he had successfully filed a previous EEOC charge against a different employer. After full briefing, the District Court held that Mr. Bledsoe's Title VII claims were time-barred and that the facts did not justify equitable tolling of the limitations period. **Appendix A 1a-6a.** Because the Court held that Mr. Bledsoe was precluded from bringing a Title VII action, it did not reach the merits of his discrimination and retaliation claims. The Court also entered summary judgment on Mr. Bledsoe's state law tort claims. **Appendix A 6a-7a.**

Mr. Bledsoe appealed to the United States Court of Appeals for the Eighth Circuit on several issues, including the equitable tolling issue. He argued that the District Court erred in failing to apply the equitable tolling

doctrine because the EEOC engaged in positive misconduct. According to Mr. Bledsoe, the Commission's misconduct included improperly transferring his claim to the Memphis EEOC Office, conducting only a ten-minute telephone interview, not promptly responding to his letters, and initially mailing his right-to-sue letter to the wrong address. **Appendix B 11a.**

Mr. Bledsoe did not argue to the District Court or to the Court of Appeals that the information form he completed constituted a charge, that he ever treated it as a charge, or that the EEOC treated it as a charge. Likewise, the record reflects that Mr. Bledsoe has never suggested at any stage of this case that his late-filed charge related back to the information form's transmittal.

After full briefing by the parties, a panel of the United States Court of Appeals for the Eighth Circuit (Morris S. Arnold, Richard S. Arnold, and Kermit E. Bye, Circuit Judges) affirmed the District Court's decision. The Eighth Circuit upheld the District Court's decision on Mr. Bledsoe's Title VII claims, specifically holding that Mr. Bledsoe understood that he had 180 days to file a charge and "nothing approaching affirmative misconduct occurred on the part of the EEOC." **Appendix B 12a-13a.** In due course, the Eighth Circuit denied Mr. Bledsoe's petition for rehearing or rehearing en banc.

Mr. Bledsoe has petitioned this Court for review of the Eighth Circuit's decision on the equitable tolling issue.

As in the District Court and the Court of Appeals, Mr. Bledsoe rests his tolling argument on what he characterizes as "the administrative dereliction of the EEOC." **Petition 3**. And as in those Courts, Mr. Bledsoe makes no argument that his information form was a charge or that his post-deadline charge relates back to some of his earlier contacts with the EEOC.

Mr. Bledsoe also seeks review of the Eighth Circuit's decision on his state law causes of action. Respondent NYS respectfully waives its response on those issues.

The Reasons for Denying the Writ

There are no good reasons to grant certiorari. This case presents no question on which the Courts of Appeals are divided; it involves no conflict between a state and federal court; and it raises no important but unsettled question of federal law. *Compare,* USSCTR 10. Rather, Mr. Bledsoe invokes this Court's supervisory authority, argues that the Eighth Circuit made a mistake in applying its own precedent on equitable tolling, and seeks the writ to correct that error. Mr. Bledsoe's argument boils down to only this: that the Eighth Circuit erred by finding that he was not lulled into inaction by the EEOC and by not citing its earlier decision in *Anderson v. Unisys Corp.*, 47 F.3d 302 (8th Cir. 1995).

Mr. Bledsoe is mistaken. The Eighth Circuit applied the law correctly to the facts of his case. While the Eighth

Circuit did not cite *Unisys*, the panel specifically held that Mr. Bledsoe understood that he had 180 days to file an administrative charge, thus distinguishing Mr. Bledsoe's case from the facts in *Unisys*. **Appendix B 12a**; *Unisys Corp.*, 47 F.3d at 306-07.

Equitable tolling always turns on the facts; no reason exists for this Court to second-guess the fact-bound judgments of the Court of Appeals and the District Court here. Mr. Bledsoe complains, in sum, that the Court of Appeals misapplied the properly stated and settled law of equitable tolling. The Eighth Circuit did not err. But even assuming an error, none of the traditional and important concerns motivating review being present, the Court should not grant the petition for certiorari.

Nor should the Court grant this petition based on its recent decision in *Edelman v. Lynchburg College*, 122 S.Ct. 1145 (2002). Although *Edelman* involved a tolling issue as well, Mr. Bledsoe did not raise that particular issue below, did not preserve it, and did not raise it in this petition. Specifically, he has never argued that he relied on EEOC regulation 29 C.F.R. 1601.12(b), allowing for post-limitations verification of a charge, or argued that the regulation should apply in this case. The issue has not been briefed, and neither the District Court nor the Eighth Circuit considered or decided the issue in this case. Therefore, the *Edelman* issue is not before this Court.

For all these reasons, the Court should deny Mr. Bledsoe's petition.

1. The Law Of Equitable Tolling Is Settled And Mr. Bledsoe Does Not Ask This Court To Revisit It.

Mr. Bledsoe petitions this Court for certiorari arguing that the Eighth Circuit made a mistake in applying equitable tolling principles and precedents to his case. He does not argue that this Court needs to clarify the law of equitable tolling. No such need exists. That law is clear. *Baldwin Co. Welcome Ctr. v. Brown*, 466 U.S. 147, 151 (1984); *Zipes v. Trans World Airlines, Inc.*, 455 U.S. 385, 393 (1982). Taken at its best, then, Mr. Bledsoe's petition asks this Court to correct a Court of Appeals' error in applying the law. There was no such error below. But even if there had been, this Court has more important matters on which to spend its limited resources.

2. The Eighth Circuit Followed The Settled Law Of Equitable Tolling In Rejecting Mr. Bledsoe's Invocation Of That Law.

There has never been any question in this case that Mr. Bledsoe failed to file an EEOC charge within 180 days of the last alleged act of discrimination. He also admitted that the EEOC informed him of his rights and the 180-day statute of limitations. **Appendix A 5a, O 80a.** Further, he was familiar with the charge-filing procedure because he had filed an EEOC charge against a former employer. Mr. Bledsoe argues, however, that because the

EEOC did not respond to a letter he sent 60 days before the deadline passed, his mistake should be excused.

Therefore, the petition presents only one question: whether, under the particular facts of this case, the doctrine of equitable tolling excuses Mr. Bledsoe's lack of diligence. The Eighth Circuit correctly answered "no" to that question.

In so holding, the Court of Appeals followed this Court's decision in *Baldwin*. See Eighth Circuit's opinion below citing *Shempert v. Harwick Chemical Corp.*, 151 F.3d 793, 798 (8th Cir. 1998), *cert. denied*, 525 U.S. 1139 (1999), and omitting citation to *Baldwin*. **Appendix A 12a.** Mr. Bledsoe fails to address the *Baldwin* case in his petition. In that case, this Court laid down the background principles of diligence that guide the equitable tolling inquiry. "One who fails to act diligently cannot invoke equitable principles to excuse that lack of diligence." *Baldwin*, 466 U.S. at 151. This Court was clear, moreover, that sympathy does not trump the need for diligence. "Procedural requirements established by Congress for gaining access to the federal courts are not to be disregarded by courts out of a vague sympathy for particular litigants." *Id.* at 152.

In Baldwin, the Court listed the circumstances in which equitable tolling typically applies: when the claimant receives inadequate notice; where a motion for appointment of counsel is pending; when the court has led a plaintiff to believe that he or she has done everything

required of him or her; or where affirmative misconduct on the part of the defendant lulled the plaintiff into inaction. 466 U.S. at 151.

As the Eighth Circuit correctly observed, this case presents none of those situations. Rather than lead Mr. Bledsoe to believe that he had done everything required, the EEOC instead informed him that he had 180 days to file a charge. And despite Mr. Bledsoe's assertions, the Commission did not engage in affirmative misconduct. The District Court and the Court of Appeals thoroughly considered his misplaced allegations and rejected them. **Appendix A 6a, B 12a-13a.**

Mr. Bledsoe also contends that the Eighth Circuit's decision is contrary to its prior holding in *Anderson v. Unisys Corp.*, 47 F.3d at 306-07, but he ignores key factual distinctions between his case and *Unisys*. The plaintiff in *Unisys* relied on a letter from the state human rights agency, which said that he had one year to file a state discrimination complaint, but made no mention of the 300-day limitation period to file an EEOC charge. The Eighth Circuit found that the letter contained sufficiently "ambiguous and misleading language" to equitably toll the limitations period. 47 F.3d at 307.

Mr. Bledsoe, on the other hand, was never misled about the statute of limitations. The EEOC representative personally informed him that he had 180 days to file a charge – there was no ambiguity in that. Further, he knew his rights and the EEOC process, having filed an EEOC charge against a former employer. Under these

circumstances, the Eighth Circuit was correct in placing the responsibility for the failure to file a charge on Mr. Bledsoe's shoulders.

Mr. Bledsoe also argues that the Court of Appeals did not follow this Court's decision in *Zipes* that Title VII's timely filing requirement is not jurisdictional but is subject to equitable tolling. 455 U.S. at 393. Of course that is the law. But Mr. Bledsoe reads too much into that exception. As *Baldwin* made plain, *Zipes* did not mean that the timeliness requirement need never be satisfied, only that it was subject to waiver and tolling. *Baldwin*, 466 U.S. at 152 n.6. The Eighth Circuit considered Mr. Bledsoe's argument for equitable tolling under all the circumstances and rejected that argument. The Eighth Circuit's decision follows *Zipes* and *Baldwin* faithfully.

3. Mr. Bledsoe Has Never Argued Relation Back And That Issue Is Not Before The Court In This Case.

The Court should not grant Mr. Bledsoe's petition based on its recent decision in *Edelman v. Lynchburg College*, 122 S.Ct. 1145 (2002). Mr. Bledsoe has never argued that his untimely EEOC Charge should relate back to the information form he submitted to the EEOC. He has never never relied on EEOC regulation 29 C.F.R. 1601.12(b), which allows for post-limitations verification of a charge, and he has never asserted or argued that the regulation should apply in this case. This is evident from the fact

that he cites neither the regulation nor the *Edelman* decision in his petition. Further, the relation-back issue has never been briefed in this case, and neither the District Court nor the Eighth Circuit considered or decided it. Therefore, the *Edelman* issue is not before this Court, and the record will not support certiorari on that basis.

Nor does the Court of Appeals' reliance on *Shempert v. Harwick Chemical Corp.*, 151 F.3d 793, in this case raise an *Edelman* issue. While relying in part on *Shempert* in rejecting Mr. Bledsoe's equitable tolling argument, the Court of Appeals did not rely on the part of *Shempert* that this Court overturned in *Edelman*. *Compare Shempert*, 151 F.3d at 796-97, *with Edelman*, 122 S.Ct. at 1148-49 n.4.

Shempert presented two distinct issues: relation back under 29 C.F.R. 1601.12(b) and equitable tolling based on the EEOC's conduct. *Edelman* addressed only the first issue. But the EEOC-conduct part of *Shempert* -- on which the Eighth Circuit relied in this case -- remains good law. *See Shempert*, 151 F.3d at 797-78.

Mr. Bledsoe's petition is clear on what he believes this case is about: "the administrative dereliction of the EEOC[,]" and a series of events that "led Mr. Bledsoe to believe that an obstruction of justice had been committed by the EEOC." **Petition 3, 8.** Hence this case presents issues about the application of the settled law of equitable tolling to particular facts; it does not present any *Edelman* issue.

Conclusion

This Court should deny Mr. Bledsoe's Petition.

Respectfully submitted,

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